

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BEN DENSON,

Appellant,

v.

NORTHWEST AIR POLLUTION
AUTHORITY,

Respondent.

PCHB No. 84-246

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and \$50 civil penalty for the purported violation of Northwest Air Pollution Authority (NWAPA) regulations, Section 501-Outdoor Fires, came on for hearing before the Pollution Control Hearings Board, on December 17, 1984, in Bellingham, Washington; Wick Dufford and Gayle Rothrock (presiding). The hearing was reported by Brooke Anderson of Sedro Woolley.

Appellant appeared and represented himself. Respondent appeared by Ken Evans, attorney at law for Northwest Air Pollution Agency.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Oral argument was heard. From the testimony, evidence, and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent agency, pursuant to RCW 43.21B.260, has on file with
7 this Board a certified copy of its regulations, which are noticed.

8 II

9 In August of 1984, there were two noticeable open backyard fires
10 with gray-to-black colored smoke at 3016 Bennett Drive in Bellingham,
11 reported by the Marietta Fire Station to respondent agency. An
12 inspector from the agency was not able to appear and view the fire at
13 the first incident, August 3, but did appear and view an open fire
14 burning with roofing materials on August 14, the second incident.

15 III

16 Prior to the incident of August 3, appellant, the owner of the
17 subject property, attempted to inform himself of the applicable open
18 burning regulations. He had difficulty obtaining accurate
19 information, and did not learn of NWAPA's regulatory role until after
20 the August 3 fire. NWAPA issued appellant a Notice of Violation in
21 relation to that fire, as a warning against burning prohibited
22 materials.

23 IV

24 Following the first incident, appellant, the owner of the subject
25 property, had a spirited exchange of views with respondent's executive

1 officer about the burning of materials, including prohibited materials
2 without a permit, and the authority of NWAPA and other agencies to
3 monitor fires and issue permits.

4 Appellant subsequently advised his son, who was assisting him
5 dispose of several layers of old roof, not to burn anything but the
6 wood shingles and strips; asphalt shingles and tar paper being
7 prohibited materials which produce blackish smoke when they
8 incinerate. What appellant neglected to provide for was the cleaning
9 out of the fire site or the establishment of a new fire pile, where no
10 left over prohibited materials would mix with the burning of wood
11 products and/or natural vegetation.

12 V

13 On August 14, 1984, appellant Denson's son was burning what he
14 thought to be wood strips and shingles on the old fire site and dark
15 gray smoke arose ten feet into the air. At 4:30 p.m. a NWAPA
16 inspector appeared and noted some prohibited materials (asphalt
17 shingles and tar paper) in the burning, four-foot by four-foot pile.
18 The weather was calm and it was not raining.

19 The inspector discussed rules for open burning with appellant's
20 son, who was attending the fire. Appellant was not present. The
21 inspector directed the fire be extinguished. The attendant did that,
22 relieving the fire station of that responsibility.

23 Appellant and his son allowed and caused to be ignited an outdoor
24 fire with prohibited materials therein on that date and then
25 extinguished the blaze when requested by the inspector.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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VI

Respondent agency thereafter issued Notice of Violation No. 1271 and a \$50 civil penalty to appellant property owner for burning prohibited materials in an outdoor fire. From this, appellant appealed to this Board on September 19, 1984.

VII

There is no record of any violations of NWAPA regulations by appellant other than the events of August 3 and 14, 1984.

VIII

Any Conclusion of law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.
RCW 43.21B.

II

The Legislature of the State of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

The respondent has adopted its Regulations, which implement this section of the Clean Air Act.

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1 III

2 Respondent's regulations provide in relevant part:

3 It should be unlawful for any person to cause or
4 allow any outdoor fire...containing prohibited
5 materials, including but not limited to, rubber
6 products, asphaltic products, tires, crackcase oil,
petroleum wastes, plastics, garbage, dead animals or
other like material. Section 501.22.

7 Whether the burning of such material was or was not intentional is
8 legally irrelevant to the existence of a violation; therefore, in
9 allowing a fire with a quantity of prohibited materials, appellant has
10 violated NWAPA regulations at Section 501.22.

11 IV

12 At the time of the events of August 14, 1984, appellant was fully
13 informed of the applicable NWAPA open burning regulations. Thus,
14 problems with finding out what the law requires cannot operate in
15 mitigation of the penalty assessed. On the date in question, NWAPA
16 had the power to levy penalties of up to \$250 for each violation.
17 Because there is no record of violation prior to August 1984, a
18 penalty of only \$50 is appropriate.

19 V

20 Any Finding of Fact which is deemed a Conclusion of Law is hereby
21 adopted as such.

22 From these Conclusions of Law the Board enters this
23
24
25

ORDER

The Notice of Violation and \$50 civil penalty issued by NWAPA is affirmed.

DATED this 1st day of January, 1985.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Wick Dufford
WICK DUFFORD, Lawyer Member